

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

CLINTON BOYD #543542 §
v. § CIVIL ACTION NO. 9:08cv224
OFFICER WALKER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Clinton Boyd, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

In his complaint, Boyd says that he has “put up defense many times but been denied protection of the law” because of his poverty. He says that TDCJ officials have refused him proper medical care and that an officer named Walker destroyed his high blood pressure medication. Boyd concedes that he has “had problems” exhausting his Step Two grievance . He asks for \$38,000 in damages.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed. The Magistrate Judge noted that Boyd has filed numerous lawsuits or appeals which have been dismissed as frivolous or for failure to state a claim by the federal district courts or the Fifth Circuit Court of Appeals. The Magistrate Judge also concluded that Boyd failed to show that he was in imminent danger of serious physical injury as of the time that he filed the present case. Consequently, the Magistrate Judge recommended that Boyd's application for leave to proceed *in forma pauperis* be denied and that Boyd's lawsuit be dismissed with prejudice as to the refiling of

another *in forma pauperis* lawsuit raising the same claims as in this case, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full \$350.00 filing fee. Finally, the Magistrate Judge recommended that if Boyd paid the full filing fee within 30 days of the entry of the judgment of dismissal, his lawsuit should be allowed to continue as though the full fee was paid from the outset.

Boyd received a copy of the Magistrate Judge's Report on January 6, 2009, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as in this case, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full \$350.00 filing fee. Should Boyd pay this fee within 30 days of the date of entry of final judgment, his lawsuit will be allowed to continue as though the full fee were paid from the outset; however, payment of the full filing fee would not affect a frivolousness analysis, nor would it affect the question of exhaustion of administrative remedies. Finally, it is hereby

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

So ORDERED and SIGNED this 8 day of April, 2009.



Ron Clark, United States District Judge